

VZCZCXRO0670  
PP RUEHDE RUEHDIR  
DE RUEHKU #0095/01 0331155  
ZNY CCCCC ZZH  
P 021155Z FEB 09  
FM AMEMBASSY KUWAIT  
TO RUEHC/SECSTATE WASHDC PRIORITY 2753  
INFO RUEHZM/GULF COOPERATION COUNCIL COLLECTIVE PRIORITY  
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 KUWAIT 000095

SIPDIS

DEPT FOR NEA/ARP

E.O. 12958: DECL: 01/25/2019  
TAGS: [EFIN](#) [KU](#) [KTFN](#) [PGOV](#) [PREL](#) [PTER](#) [PINR](#)  
SUBJECT: KUWAITI COURT ISSUES VERDICT IN AL-BATHALI CASE

REF: A. 2008 KUWAIT 585  
[1](#)B. 2008 KUWAIT 720  
[1](#)C. 2008 KUWAIT 771  
[1](#)D. 2009 KUWAIT 73  
[1](#)E. 2009 KUWAIT 71

Classified By: ECON COUNSELOR OLIVER JOHN FOR REASONS 1.4(b)  
and (d)

Summary  
-----

[1](#)1. (C) On January 27, after months of postponements, a Kuwaiti Criminal Court found UNSCR 1267 designee and terrorist facilitator Mubarak Al-Bathali guilty of "inciting youth to jihad (combat) activities against foreign forces in Iraq." The court sentenced him to three years in prison and offered a temporary suspension of sentence with payment of a 500kd (USD 1,710) fine. Both Bathali and the GoK have the option to appeal. His defense attorney said he intended to appeal the decision. The crucial Al-Bathali verdict comes in the same week as a court decision overriding a UNSCR 1267 asset freezing and a GOK appeal for the release of Al-Bathali's son from MNF-I detention (septel). End summary.

Background Information  
-----

[1](#)2. (U) In response to a January 16, 2008 UNSCR 1267 designation against him for providing support to al-Qaeda and other terrorist organizations, Kuwaiti Mubarak Mushkhas Sanad Al-Bathali denied any involvement in supporting or financing terrorist activities, claiming he was a "victim" of the USG war on terror. However, in a May 8, 2008 interview with the local Arabic-language newspaper Al-Qabas, Al-Bathali admitted to inciting youth to fight in Iraq and Afghanistan and to helping fighters to enter Iraq through the Syrian and Saudi Arabian borders (ref A). After initially dismissing Al-Bathali as "crazy", Kuwaiti State Security (KSS) subsequently detained him for 21 days (the maximum allowed by law). On the date he was due to be released on June 24, however, he was remanded for an additional 15 days. He was eventually released on July 8 on 1000 KD (USD 3775) bail and a travel ban (ref B) was imposed on him. Reportedly, during KSS interrogations, Bathali confessed to involvement in the training of youths -- including the brother of the head of the terrorist group Black Lions -- to fight against American forces, and to participating in meetings with former Al-Qaeda leaders in Iraq.

[1](#)3. (U) On December 28, 2008, subsequent to his release from jail and pending his final court hearing scheduled for January 13, Al-Bathali was re-arrested and interrogated by KSS for reportedly announcing that he would launch a Saudi-like Commission for the Promotion of Virtue and Prevention of Vice. He appeared before the Public Prosecutor on December 29 and was released at that time without charge. During a January 13 court hearing, Defense Attorney Sanad

Al-Thuwaimer asserted Al-Bathali's innocence of charges that he incited youth to jihad, stating that Islam, the official religion of Kuwait, also calls for Jihad.

Sentence: Three Years in Prison or 500kd Fine

-----  
¶4. (C) Al-Bathali faced up to five years in prison if found guilty. On January 27 the court found Al-Bathali guilty of "inciting youth to jihad (combat) activities against foreign forces in Iraq," sentencing him to three years in prison with hard labor. The judge gave Al-Bathali the option of paying a 500kd (USD 1,710) fine to suspend the sentence for 20 days. According to a legal contact of the Embassy's, this sentence suggested that the prosecution had not made a compelling enough case against Al-Bathali.

¶5. (C) According to the same contact, either Al-Bathali or the GoK can appeal. If neither appeals and Al-Bathali pays the fine, the suspended sentence will stand (i.e. convicted and sentence suspended). If he renews his recruitment activities during that period, the jail sentence can be reinstated. His defense attorney Sanad Al-Thuwaimer said he would appeal the decision, moving the case to Kuwait's Appellate Court and then possibly to the Cassation Court (Supreme Court) level.

Counselor Khalid Salem, Chief of Higher Criminal Court on Al-Bathali Case

-----  
¶6. (C) Counselor Khalid Salem, Chief of the Higher Criminal Court, provided Econoff and Poloff an overview of the prosecution's case against Al-Bathali in a January 20

KUWAIT 00000095 002 OF 002

meeting. He noted that while he had not presided over the case, as the Chief Counselor he had access to the file. He said that while Kuwaiti law provided no specific definition of terrorism under which Al-Bathali could be prosecuted, the act of "inciting youth for Jihad against troops in Iraq and Afghanistan," threatens Kuwait's relations with a foreign country and is punishable under criminal law. (Note: Al-Bathali was also charged with possession of unlicensed firearms, which were confiscated during a search of his residence by KSS in May 2008 End Note). In response to questions regarding Al-Bathali's mental faculties, Salem responded that, "Al-Bathali does not suffer from mental illness and should be held accountable for his actions." He also referred to Bathali's actions, "as those of an extremist who misinterprets Islamic Law and instruction."

Comment:

-----  
¶7. (C) Al-Bathali's prosecution provided the Kuwaiti judiciary a rare --but missed-- opportunity to display GOK resolve in anti-terrorism efforts. In the event, Al-Bathali is likely to walk with nothing more than a relatively light fine. Counselor Khalid is one of many Kuwaitis who have expressed frustration to emboffs over the lack of an adequate legal definition of terrorism and the full range of appropriate legal means to prosecute suspects. Since Kuwait is unlikely to pass and implement effective anti-terrorism legislation any time soon, given the ongoing tensions between its National Assembly and the government, Counselor Khaled believes that using "peripheral" approaches such as prosecuting for "inciting Jihad" is the only course at the judiciary's disposal.

¶8. (C) Coincidental to the January 27 Al-Bathali ruling was a court ruling overriding the Central Bank's freezing of assets -- per UNSCR 1267 mandate -- of fellow designee and terrorism facilitator Hamid Al-Ali (ref E). The GoK also raised again with post January 25 its request that Al-Bathali's son Abdulrahman Al-Bathali be released from MBF-I custody (ref D) End comment.

\*\*\*\*\* \*

For more reporting from Embassy Kuwait, visit:  
[http://www.state.sgov.gov/p/nea/kuwait/?cable s](http://www.state.sgov.gov/p/nea/kuwait/?cable%20s)

Visit Kuwait's Classified Website:  
<http://www.state.sgov.gov/p/nea/kuwait/>  
\*\*\*\*\* \*  
JONES